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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1301

RICHARD L. BORDEN, ET AL.,

Petitioners,

v.

DIRECTOR, STATE DEPARTMENT OF ASSESSMENTS AND TAXATION, ET AL.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

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DIRECTOR, STATE DEPARTMENT OF ASSESSMENTS AND TAXATION, ET AL.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

Petitioners pray that a writ of certiorari issue to review the judgment of the Court of Appeals of Maryland entered in the above-entitled case on November 26, 1973, denying a petition for a writ of certiorari to the Court of Special Appeals of Maryland.

OPINIONS BELOW

The Order of the Court of Appeals of Maryland, dated November 26, 1973, denying certiorari to the Court of Special Appeals is printed in Appendix A. The opinion of the Court

of Special Appeals of Maryland, dated October 9, 1973, is printed in Appendix A and is reported in 19 Md. App. 112, 309 A.2d 773. The opinion of the Circuit Court for Anne Arundel County which was appealed to the Court of Special Appeals of Maryland is unreported, dated June 25, 1973, and is printed in Appendix A. The opinion of the Circuit Court for Anne Arundel County on a material and relevant issue in the case, which was not appealed by either Petitioners or Respondents, is unreported, dated August 29, 1973, and is printed in Appendix A.

JURISDICTION

The judgment of the Court of Appeals of Maryland was entered on November 26, 1973. This Petition is being filed within the ninety days following denial of the Petition for Writ of Certiorari to the Court of Special Appeals of Maryland. Jurisdiction is conferred on this Court by 28 U.S.C., Section 1257(3) since an equal protection claim under Section 1 of the Fourteenth Amendment to the Constitution of the United States was set up and asserted by Petitioners in their Petition of October 4, 1972, as amended January 18, 1973, filed in the Circuit Court for Anne Arundel County. Petitioners submit that they have been denied their equal Protection rights throughout the proceedings in this lawsuit.

QUESTION PRESENTED

1. Whether the denial by the State of Maryland of monetary relief to the Petitioner taxpayers who have secured a court decree to the effect that their assessments were made in violation of certain mandatory state tax statutes is a denial of equal protection to those taxpayers, in that the Maryland remedy for discriminatory assessments remits the taxpayer to an action aimed at raising all other assessments to his own level rather than, as was held by this Court in

Township of Hillsborough v. Cromwell, having the State, itself, remove the discrimination and provide an appropriate form of relief from the discrimination.

STATUTES INVOLVED

The statutes involved are the following Maryland tax statutes found in the Maryland Annotated Code:

Volume 7, Article 81, §232(8) (a) and (b);

Volume 7, Article 81, §14(b) (1);

Volume 7, Article 81, §232(4);

Volume 7, Article 81, §29A(a).

The Constitutional provisions involved are Article 15 of the Declaration of Rights of the Constitution of the State of Maryland, and Section 1 of the Fourteenth Amendment to the Constitution of the United States. The statutes and relevant constitutional sections are reprinted on pages 21a-24a, Appendix B.

STATEMENT OF THE CASE

Petitioners, as taxpayers of Anne Arundel and Talbot Counties, filed a class action Petition in the Circuit Court for Anne Arundel County, on October 4, 1972, amended January 18, 1973, against the State Department of Assessments and Taxation, the Supervisors of Assessments for Anne Arundel and Talbot Counties, Controller, Anne Arundel County, the County Council of Anne Arundel County, Treasurer of Talbot County, the County Commissioners of Talbot County, and the Comptroller of the Treasury for the State of Maryland. Petitioners alleged that the tax assessing authorities had failed to follow the mandates of Article 81, §232(8) (a) and (b) which require an annual review of all real property in every county and an annual reassessment of all property

which the review discloses has changed in value. It was also alleged that the violation of the annual review and reassessment requirement obviously meant that Article 81, §14(b)(1) which directs that all real property shall be assessed at full cash value less an allowance for inflation[1] on the date of finality[2] was in turn being violated.

Petitioners comprise a class[3] which consists of all residential property owners in Anne Arundel and Talbot Counties who were reassessed in 1971 (approximately one-third of each county) whose reassessments were reflected by the 1972-73 property tax bill, and all residential property owners who were reassessed in Anne Arundel County in 1972 (approximately another one-third of that County) whose reassessments were reflected by the 1973-74 tax bill. Petitioners, whose property was reassessed while other property in both Counties which had changed in value was not reassessed in the face of a statute demanding *annual* review and reassessment, further alleged that the assessment practices violative of Article 81, §232(8)(a) and (b) were in contravention of Article 15 of the Declaration of Rights of the Maryland Constitution and of the Fourteenth Amendment to the Constitution of the United States, in that Petitioners were forced to pay a greater proportion of taxes than others similarly situated.

Petitioners sought a declaratory judgment that the practices, in fact, violated the Maryland tax statutes, an injunc-

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[1] Currently, in Maryland, the State Department of Assessments and Taxation has set 40% as the inflationary allowance to be applied to real property.

[2] The date of finality relevant to this case is set by Article 81, §29A(a), Maryland Code, as January first of the year following the year of assessment.

[3] The issue as to whether or not the action was a valid class action was never decided by any of the courts which heard the case.

tion forbidding assessments on any other basis than that set forth in Article 81, §232(8) (a) and (b), refunds of taxes paid for fiscal 1972-73 based on the illegal assessments, and injunctive relief from the collection of taxes for 1973-74.

The case was, in effect, split into two parts. One aspect, which for simplification will be called the merits of the case, involved the question of whether or not the assessment practices violated the statute, and the other involved the relief to be accorded to the Petitioners.

In an opinion on the merits dated August 29, 1973 (see Appendix A, page 15a) the Circuit Court of Anne Arundel County ruled that the assessors did, in fact, violate the mandates of Article 81, §232(8) (b) in that property was not reassessed annually when the annual review disclosed a change in value and enjoined the State Respondents to fully discharge their obligation under that section and to submit a proposal setting forth a plan for compliance. This opinion was not appealed by the State.

However, in an opinion dated June 25, 1973, see page 12a of Appendix A, the Circuit Court ruled that regardless of any decision on the merits Petitioners were not entitled to refunds of any taxes and that Petitioners were not entitled to injunctive relief of any kind with respect to the consequences of the 1971 and 1972 reassessments, while at the same time stating, "A review of the Code and of the decisions interpreting it reveal a system as despotic as the one our forefathers fought a revolution to escape." (See Opinion, page 13a, Appendix A.)

The Court of Special Appeals, by opinion filed on October 9, 1973 (see page 1a of Appendix A), affirmed the lower court decision. The Court of Appeals then denied Petitioner's Petition for Certiorari. (See page 11a of Appendix A.)

REASONS FOR GRANTING THE PETITION

A. IT IS CLEAR THAT THE DENIAL OF MONETARY RELIEF TO THE PETITIONERS IN THIS CASE IS BASED UPON THE RULE FOLLOWED IN MARYLAND TO THE EFFECT THAT A TAXPAYER IS LIMITED TO AN ACTION AIMED AT RAISING THE ASSESSMENTS OF OTHER TAXPAYERS TO THE LEVEL OF HIS ASSESSMENT.

In denying monetary relief the Court of Special Appeals relied on *Baltimore Steam Packet Co. v. State Tax Commissioner*, 161 Md. 9, 155 A. 158 (1931); *Schley v. Lee*, 106 Md. 390, 67 A. 252 (1907), and *State Tax Commissioner v. C & P Telephone Co.*, 193 Md. 222, 66 A.2d 477 (1949).

For example, in *State Tax Comm'r v. C & P Telephone Company, supra*, the utility had appealed from an assessment of its capital stock made by the State Tax Commission. One of C & P's contentions was that other utilities were being assessed at a lower percentage of capitalized income than they were. The Court of Appeals affirmed the assessment stating:

> ". . . [I]f other utilities have been under-assessed, appellee's remedy lies not in attempting to be relieved of the assessment itself but in restraining the Commission from not properly assessing other utilities." 193 Md. at 235.

The only Maryland case in which the court held that the State itself must remove the discrimination is *Sears, Roebuck v. State Tax Commission*, 214 Md. 550, 136 A.2d 567 (1957) in which personal property assessments were invalidated for non-allowance of the inflation factor granted to real property assessments. However, in order to fall within the Sears exception in Maryland it is necessary to prove even though assessments are discriminatory, that an assessment is in excess of true cash value, i.e. that the assessment is too high, rather than that other property is intentionally assessed too

low. It is submitted that this is a highly artificial construct and that a taxpayer who proves that similar assessments are discriminatorily low should be entitled to have the State remove the discrimination.

B. THE STATE OF MARYLAND DENIES TO THE MARYLAND TAXPAYER THE FOURTEENTH AMENDMENT PROTECTION THAT THIS COURT HAS SET FORTH IN *TOWNSHIP OF HILLSBOROUGH v. CROMWELL*, 326 U.S. 620 (1946).

> "The extent to which the equal protection clause affects state property tax assessments has often been at issue before the United States Supreme Court. All states require that real property of the same class . . . be assessed equally, that is, at full value or a uniform percentage thereof . . . [T]he Court repeatedly has held that discrimination between parcels within the same class may indeed constitute a denial of equal protection. This requirement of intra class equality will prevail in any conflict with a state's provision for full-value assessment." Notes, Inequality in Property Tax Assessments: New Cures for an Old I11, 75 Harv. L. Rev. 1374 at 1375 (1962).

Thus, in *Township of Hillsborough v. Cromwell*, 326 U.S. 620 (1946) this Court grounded federal jurisdiction of a complaint of unequal assessment on a finding that New Jersey law provided no effective remedy for discrimination in that, under New Jersey law, the taxpayer was required to bring suit to raise all other assessments to the level of the taxpayer who proves discrimination.

Thus this Court declared:

> "The equal protection clause of the Fourteenth Amendment protects the individual from State action which selects him out for discriminatory treatment by subjecting him to taxes not imposed on others of the same class. The right is the right to equal treatment. He may not complain if equality is achieved by increasing the same taxes of other members of the class to the level of his own. *The constitutional requirement, how-*

> *ever, is not satisfied if a State does not itself remove the discrimination but imposes upon him against whom the discrimination has been directed the burden of seeking an upward revision of the taxes of other members of his class.*" 326 U.S. at 623. (Emphasis supplied.)

Two earlier Supreme Court cases are important in this regard in that they affirmed the same principle by way of petitions of certiorari to state courts.

In *Sioux City Bridge Co. v. Dakota County*, 260 U.S. 441 (1923) the court held that a taxpayer whose property had been discriminatorily assessed at full value must be granted a reduction to the fraction at which other parcels had been assessed in the face of a ruling by the Supreme Court of Nebraska that the taxpayer must sue to have other assessments raised.

> "The conclusion in these and other Federal authorities is that such a result as that reached by the supreme court of Nebraska is to deny the injured taxpayer any remedy at all because it is utterly impossible for him, by any judicial proceeding, to secure an increase in the assessment of the great mass of under assessed property in the taxing district." 260 U.S. 446.

The same result was reached in *Cumberland Coal Co. v. Board of Revision*, 284 U.S. 23 (1931) on a writ of certiorari to the Supreme Court of Pennsylvania. In *Cumberland Coal* the unconstitutional discrimination was found in a procedure by which all coal in a township was assessed at the same per-ton figure regardless of differences in actual value and the court found that the discriminatory assessments were made pursuant to a deliberately adopted system. Mr. Chief Justice Hughes found that Petitioners were entitled to a downward readjustment in their assessments.

It is submitted therefore that the State of Maryland does not protect the Fourteenth Amendment rights of Petitioners

as those rights have been construed by the highest court of this land.

C. PETITIONERS HAVE ESTABLISHED THAT THEY HAVE BEEN DISCRIMINATORILY ASSESSED PURSUANT TO A DELIBERATELY ADOPTED SYSTEM BY THE STATE TAXING AUTHORITIES.

It is without question that the annual review and reassessment provisions of the Maryland taxing statutes have been the law in Maryland since 1956. However, as evidenced by the opinion of the Circuit Court of Anne Arundel County the State of Maryland as of 1973 was still not complying with the provisions of the annual reassessment plan. Therefore, lying at the heart of Petitioners' case is a systematic and long-standing violation of Article 81, §232(8)(b).

While the State of Maryland has now been directed to comply with the annual reassessment provisions of the Maryland Code and has submitted compliance proposals based on the injunction issued by the Circuit Court for Anne Arundel County by decision of August 29, 1973, nothing short of monetary relief for the Petitioners who were forced to pay a greater proportion of property taxes for 1972-73 and 1973-74 than other members of their class will cure the inequality resulting from the violation of the Maryland tax statutes that require *all* property which has changed in value to be reassessed annually. See *Perkins v. County of Albermarle* (Va.), 198 S.E.2d 626 (1973); The Maryland County Property Tax — A Need for Reform, 3 Baltimore Law Review 13 at 28-29 (1973).

CONCLUSION

For all these reasons, this petition for a writ of certiorari should be granted.

STEPHEN H. SACHS,
ELIZABETH LOGAN NILSON,
Counsel for Petitioners.

APPENDIX A
OPINIONS AND DECREES BELOW

In the Court of Special Appeals of Maryland

No. 338

September Term, 1973

Richard L. Borden, Et Al.,

v.

Director, State Department of Assessments and Taxation, Et Al.

Thompson; Powers; Menchine, JJ.

(Filed: October 9, 1973)

OPINION

MENCHINE, J.:

Some of the appellants[1] had filed a bill of complaint "on their own behalf and on behalf of all those similarly situated"

[1] Richard L. Borden and Robert E. Barba, owners of residential waterfront property in Anne Arundel County joined in the bill in their own behalf and on behalf of all owners of residential waterfront properties in Anne Arundel County with respect to the 1971 assessment;

William E. Ford and Charles A. Merson, owners of residential non-waterfront property in Anne Arundel County, joined in the bill in their own behalf and on behalf of all owners of residential non-waterfront property in Anne Arundel County with respect to the 1971 reassessment;

Lee F. Tabler, owner of residential waterfront property, and Ethel F. Hunt, owner of residential non-waterfront property in Talbot County, joined in the bill in their own behalf and on behalf of all owners of residential property in Talbot County with respect to the 1971 assessment.

seeking declaratory and injunctive relief from taxes imposed after allegedly unlawful assessments in Anne Arundel and Talbot Counties in 1971. An amended bill of complaint filed by the same and other[2] appellants sought additional relief as to taxes imposed after an allegedly unlawful assessment in Anne Arundel County in 1972. The amended bill alleged that state and county officials, departments and governments[3] failed to carry out the mandate imposed by Article 81, §232(8)(a) and (b); Article 81, §14(b)(1), and Article 81, §232(4)[4] of the Annotated Code of Maryland requiring

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[2] Edna M. Welch and J. F. Kendrick, owners of residential waterfront property in Anne Arundel County, joined in the bill in their own behalf and on behalf of all owners of residential waterfront property in Anne Arundel County with respect to the 1972 assessment;

Edward F. Sizer and Dallas W. Bauman, owners of residential non-waterfront property in Anne Arundel County, join in the bill in their own behalf and in behalf of all owners of residential non-waterfront property in Anne Arundel County with respect to the 1972 assessment.

[3] Named as defendants in the amended bill of complaint were: Albert W. Ward, Director of the State Department of Assessments and Taxation; William H. Riley, Supervisor of Assessments of the State Department of Assessments and Taxation; Linton B. Pumphrey, Supervisor of Assessments for Anne Arundel County; James S. McDaniel, Supervisor of Assessments for Talbot County; The State Department of Assessments and Taxation; Donald P. Carter, Controller, Anne Arundel County; Anne Arundel County, Maryland; The County Council of Anne Arundel County; Herman F. Mielke, Treasurer, Talbot County; The County Commissioners of Talbot County; Louis L. Goldstein, Comptroller of the Treasury.

[4] "Article 81, §232(8) *Continuing methods of assessment and review and reassessment.* — (a) To maintain and enforce a continuing method of assessment review, so that all assessable real property in every county and Baltimore City shall be reviewed at least once each year. Property shall be reviewed, in the discretion of the Director of the Department, by the use of property description cards, property location maps, land classification maps, unit value maps, land use maps, zoning maps, records of new construction, sales records, building cost data, private appraisals, or periodic surveys of assessment ratios or by the use of any other materials or information considered by the Director or the Department to be reliable aids in determining property value. In conducting this review, it shall not be necessary that properties be reviewed individually and separately; for the purpose of conducting this review, properties may be grouped

them to conduct an annual review and, where appropriate, annually to reassess all residential properties in Anne Arundel and Talbot Counties. The bill alleged that the appellant taxpayers and other taxpayers similarly situated (being about one-third of the taxpayers in each of the two years) were forced to bear a greater tax burden in the ensuing fiscal year than was the burden of other taxpayers upon the tax rolls of the two counties. The bill alleged that these 1971 and 1972 reassessments, violative of the aforementioned statutes, also were in violation of Article 15 of the Maryland Declaration of Rights and of Section 1 of the Four-

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into areas, grouped according to character or use, or grouped in any other manner which the Director or the Department considers to be necessary or helpful to the efficient conduct of said review. The Director and the Department shall have the power, at any time, to order and enforce a review of any properties, if such properties have not been reviewed within one year; and it shall be the duty of the Director to order and enforce a review of any properties upon receipt of a request to do so from the final assessing authority for the county or city in which such properties are located.

(b) To maintain and enforce a continuing method of real property reassessment, so that all assessable real property in every county and Baltimore City shall be properly reassessed annually whenever the annual review required in subparagraph (a) hereof discloses a change in value. In addition, the Director and the Department shall have the power, at any time, after consultation with the county commissioners in the several counties, or the appeal tax court where such exists, or the board of municipal and zoning appeals in Baltimore City as the case may be, to order and enforce a reassessment of any properties, if it appears, after a consideration and evaluation of the results of the annual assessment review required by subparagraph (a) hereof, that the existing assessments upon such properties are erroneous because they are significantly greater or less than the assessments on other similar properties possessing comparable values."

Article 81, §14(b)(1) "All real property directed in this article to be assessed, shall be assessed at the full cash value thereof on the date of finality. The term full cash value as used in this subsection shall mean current value less an allowance for inflation, if in fact inflation exists."

Article 81, §232(4) "*Supervision of assessments.* — To supervise the assessment of all property in the counties and cities of this State to the end that all taxable property shall be entered upon the assessment rolls and equalized between persons, firms and corporations, so that all persons, firms and corporations shall be assessed alike for like kind of property."

teenth Amendment to the Federal Constitution.[5] The bill further alleged that the appellees will continue to engage in the same improper and unlawful assessment practices in the future. The relief sought was as follows:

A. *Declaratory Relief*

(1) That appellees' assessment procedures contravene Article 81, §232(a) and (b); do not conform to the requirements of Article 81, §14; do not conform to Article 81, §232(4); and are in violation of Article 15 of the Declaration of Rights and Section 1 of the Fourteenth Amendment of the Constitution of the United States.

(2) That the tax levies resulting from the 1971 reassessment be declared void and illegal, or, alternatively, that any increase in tax levies resulting therefrom be declared void and illegal.

(3) That the 1972 reassessment in Anne Arundel County be declared void and illegal.

B. *Injunctive Relief*

(1) Forbidding valuation and assessment of residential properties in the counties on any other basis than upon an annual review and reassessment as required by Article 81, §232(8) (a) and (b).

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[5] Article 15, Maryland Declaration of Rights

"That * * * the General Assembly shall, by uniform rules, provide for the separate assessment, classification and sub-classification of land, improvements on land and personal property, as it may deem proper; and all taxes thereafter provided to be levied by the State for the support of the general State Government, and by the Counties and by the City of Baltimore for their respective purposes, shall be uniform within each class or sub-class of land, improvements on land and personal property which the respective taxing powers may have directed to be subjected to the tax levy; * * *."

Fourteenth Amendment, Section 1, Federal Constitution

"* * * No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

(2) Requiring execution of a continuing method of assessments to assure that all real property in Anne Arundel and Talbot Counties is reviewed once a year and reassessed annually, if such review discloses a change in value.

(3) Requiring formulation, pursuant to Article 81, §244, of a uniform plan for the assessment of property meeting the requirement of Article 81, §232(8) (a) and (b).

(4) Forbidding the collection of any property tax based on the 1971 assessment and requiring refund of any money paid by appellants or members of their respective classes, or, in the alternative, forbidding the collection of any taxes based on any increase resulting from the 1971 reassessment and requiring refund of such increase that those appellants and members of their respective classes may have paid following the 1971 reassessment.

(5) Forbidding the Supervisors of Assessments for Anne Arundel and Talbot Counties from placing the 1971 and 1972 reassessments on the tax rolls of Anne Arundel and Talbot Counties respectively.

(6) Forbidding the Supervisors of Assessments of Anne Arundel and Talbot Counties to certify the tax rolls to the County Council and the County Commissioners of Anne Arundel and Talbot Counties respectively.

(7) Forbidding the Controller of Anne Arundel County and Herman F. Mielke, Treasurer of Talbot County, as collectors of taxes, to prepare and issue tax bills for fiscal 1973-74, based upon the 1971 and 1972 assessments, or, in the alternative, forbidding them to prepare and issue tax bills to appellants and members of their respective classes for fiscal 1973-74 as to any increase resulting from the 1971 and 1972 reassessments.

The appellees Ward, Riley, Pumphrey, McDaniel and the State Department of Assessments and Taxation (allegedly responsible for the procedures utilized in the 1971 and 1972 reassessment) moved for partial summary judgment. The appellees Carter, Anne Arundel County, County Council of Anne Arundel County, Mielke, County Commissioners of Talbot County, and Goldstein (occupying roles in the col-

lection of taxes but not in the reassessment procedures) moved for complete summary judgment. The motions for summary judgment were granted by the trial court.

The granting of the requested summary judgment denied to the appellants and to the classes they purport to represent the right to:

(a) a refund of taxes paid or to any part thereof;

(b) injunctive relief against the collection of taxes based upon the 1971 and 1972 assessments;

(c) injunctive relief against the consequences of the reassessments of 1971 and 1972;

(d) injunctive relief forbidding preparation and issuance of tax bills based on the reassessments of 1971 and 1972;

(e) injunctive relief forbidding preparation and issuance of tax bills reflecting increased tax liability because of the reassessments of 1971 and 1972.

The grant of summary judgment left for further decision by the trial court the determination, upon the merits of the case, whether the assessment practices in Anne Arundel and Talbot Counties in 1971 and 1972 were in conformity with applicable substantive law. Although the decision appealed from determined less than all claims, the trial judge directed entry of a final judgment with an express determination that there was no just reason for delay, as authorized by Rule 605a. The appeal, therefore, was properly taken,[6] subject to the single caveat that the reserved issue is not before us. In the posture of the case on this appeal, we assume, without deciding, that the assessment practices were not in conformity with law.[7]

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[6] CF. *Brooks v. Ford Motor Credit Co.*, 261 Md. 278, 274 A.2d 345. Appeal from denial of injunction is authorized by Article 5, §7(c).

[7] At argument, this Court was informed that the trial judge had ruled favorably to the appellants upon the reserved issue and had ordered the remaining appellees "to fully discharge their obligations under §232(8)(b), Article 81" and had required them to submit "within 30 days a detailed description of how they propose" to do so. This appeal will, of course, in no way relate to that aspect of the case.

Appellants' Claims to Refund of Taxes

Rapley v. Montgomery County, 261 Md. 98, 274 A.2d 124, is wholly dispositive of this claim to relief. In *Rapley* it was said at page 110 [130]:

> "* * * the common law rule, as interpreted by our prior decisions, * * * precludes the recovery of taxes paid voluntarily under a mistake of law, even if paid under protest and even if the statute under which the tax was paid is later determined to be unconstitutional or invalid. The only possible escape from this harsh rule is found in the case where the taxing statute itself provides a refund; * * *."[8]

Appellants' Claims for Injunctive Relief

As heretofore stated, the appellants' claim to injunctive relief sought restraint of collection of taxes; relief from the consequences of reassessments; and restraint upon preparation and issuance of tax bills reflecting any, or any increased, tax liability. In our view all such claims will stand or fall together.

Appellants rely heavily upon *Hillsborough Township v. Cromwell*, 326 U.S. 620, wherein it was said at page 623:

> "The equal protection clause of the Fourteenth Amendment protects the individual from state action which selects him out for discriminatory treatment by subjecting him to taxes not imposed on others of the same class. The right is the right to equal treatment. He may not complain if equality is achieved by increasing the same taxes of other members of the class to the level of his own. The constitutional requirement, however, is not satisfied if a State does not itself remove the discrimination, but imposes on him against whom the discrimination has been directed the burden of seeking an upward revision of the taxes of other members of the class."

[8] Article 81, §213 and §214 provide a statutory method for the refund of State and county taxes erroneously or mistakenly paid.

That case must be considered in the light of its extraordinary condition. The Supreme Court there points out (P. 629) that federal injunctive relief to the taxpayer was accorded because:

> "* * * *so much uncertainty surrounds* the New Jersey remedy to protect the taxpayer's federal right that a refusal to dismiss the bill was a proper exercise of discretion. Thus however the case may be viewed, *the exceptional circumstances which we have noted take it out of the* general rule of Great Lakes Dredge & Dock Co. v. Huffman, 319 U.S. 293." [Italics supplied]

Although the opinion in *Hillsborough* is not a model of clarity in the exposition of its facts, it is fair to conclude that the words "exceptional circumstances which we have noted" contained in the quotation immediately above made reference to the circumstances outlined in footnote 1 of the opinion, i.e.:

> "The *assessments call for tax payments of nearly $7,000,000 for each year as compared with the Township's budget of something like $97,000* annually. *Prior* to these *assessments* the net assessed valuation for taxation of all property assessed, both real and personal, in the township *amounted to $3,117,863* for 1940 and *$3,139,020* for 1941. * * * *The additional assessments* against respondent *apparently would have increased the valuation* of the township tax ratables *by $221,940,438* for each of the two years, * * *." [Italics supplied]

It is plain that the absence of State remedy coupled with proof of a purposeful discrimination of the rights of the taxpayer compelled the grant of the relief in *Hillsborough, supra.* It is equally plain that (a) no uncertainty surrounds a Maryland remedy available to the named appellants, and (b) there is no showing of a purposeful discrimination against them.

There is no contention here[9] that assessments imposed

[9] Some of the appellants had sought relief through assessment appeal procedures authorized by Article 81, §255; some had not.

upon the individual appellants exceeded full cash value as authorized and required by the provisions of Article 81, §14(b) (1). Moreover, the amended bill of complaint, (seeking relief also for the new and different one-third of the taxpayers of Anne Arundel County affected by the 1972 reassessment) necessarily implies that *all* taxpayers, including those reassessed in a prior or the ensuing year, would be entitled to the same relief. Carried to its logical end, this burgeoning effect would achieve the absurd result that *no taxpayer would be assessed in accordance with law.*

Such a result would bring chaos to the State and its political subdivisions. Balanced against the tax anarchy that would follow the grant of the relief here sought is the circumstance that *every taxpayer* (over a three year period) would have been subjected substantially to the same tax burden, (even though subjected to an added burden in the particular year of reassessment) because of benefits accruing from the absence of reassessment in the other two years.

We do not imply of course that this circumstance would operate to permit the appellees to fail or to refuse to perform a duty prescribed by law. It is plain to us, however, that the form of injunctive relief sought by the appellants in this appellate aspect of the subject litigation is not available to them.

The case of *Baltimore Steam Packet Co. v. State Tax Commission*, 161 Md. 9, 155 A. 158, compels rejection of the relief here sought. In that case the Court of Appeals said at page 22 [163]:

> "Upon a full consideration of the contentions of the appellant, it would seem that its real complaint is that it is now taxed, while competitors are exempt, resulting in a pecuniary advantage to the competitors over it to the extent of the tax which it is required to pay. If this be true, its remedy lies, not in attempting to be relieved of the tax itself, but in restraining the proper taxing officials from allowing the exemption of its competitors. Every taxpayer has a financial interest in seeing that all property in the state, properly the subject of taxation,

> should be taxed, because, by increasing the taxable basis, the rate necessary for the production of the expenses of the state and local governments will be reduced, and the individual's tax correspondingly lowered. Such a proceeding was approved by this court in *Schley v. Lee*, 106 Md. 390, 67 A. 252."

To the same effect is *State Tax Commission v. C. & P. Telephone Co.*, 193 Md. 222, 66 A.2d 477, wherein the Court said at page 235 [482]:

> "* * * if other utilities have been underassessed, appellee's remedy lies not in attempting to be relieved of the assessment itself but in restraining the Commission from not properly assessing other utilities."

The two cases last above cited make crystal clear that there is an appropriate remedy available to the appellants.

The case of *Sears, Roebuck v. State Tax Commission*, 214 Md. 550, 136 A.2d 567, cited by appellants, is distinguishable upon three grounds. First, the taxpayer there utilized the statutory relief provided by §13(a) of Article 81 of the Annotated Code (1951). Secondly, the Court of Appeals in *Sears*, itself pointed out at page 559 [572]: "* * * the appellant is not contending that any other assessment made under the direction of the Commission was too low. It is complaining that its assessment is too high. The discrimination here has been intentional and arbitrary." Thirdly, although *Sears, supra*, cited *Hillsborough, supra*, and recognized its ruling "that the State itself must remove such discrimination," it also cited and did not depart from the doctrine declared in *Schley v. Lee*, 106 Md. 390, 67 A. 252, upon which the controlling cases of *Baltimore Steam Packet* and *Commission v. C & P, both supra*, were bottomed.

Other Maryland cases cited by appellants factually are so disparate as to furnish no meaningful comparison,[10] or did

[10] *Allegany County v. Union Mining*, 61 Md. 545.
Jones v. Gordy, 169 Md. 173, 180 A. 272.
Pressman v. Barnes, 209 Md. 544, 121 A. 2d 816.

not reach the issue we find controlling in this case.[11] Out of state cases cited by appellants also have been considered, but we have found them distinguishable on their facts, or in conflict with principles declared in the decisions upon which we have relied.[12]

Because we find that none of the individual appellants is entitled to the relief denied by the trial court, we do not reach the subsidiary issue whether their claim of entitlement to bring a class action for others similarly situated is a valid one.

JUDGMENT AFFIRMED. COSTS TO BE PAID BY APPELLANTS. MANDATE TO ISSUE FORTHWITH.

ORDER

Upon consideration of the petition for a writ of certiorari to the Court of Special Appeals in the above entitled case, it is

ORDERED by the Court of Appeals of Maryland that the said petition be, and it is hereby, denied as there has been no showing that review by certiorari is desirable and in the public interest.

/s/ ROBERT C. MURPHY,
Chief Judge.

Date: November 26, 1973.

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[11] *Hooks v. Comptroller*, 265 Md. 380, 289 A.2d 332.

[12] *Bettingole v. Springfield*, 178 N.E.2d 10 [Mass.].
Lougee v. New Mexico, 76 P.2d 6.
Miller v. Standard Nut Margarine Co., 284 U.S. 498.
Morschauser v. American News Co., 178 N.Y.S.2d 279.
Ogden City v. Armstrong, 168 U.S. 224.
Oglesby v. Chandler, 288 P. 1034.
Tumulty v. District of Columbia, 102 F.2d 254 [USCADC].

In the Circuit Court for Anne Arundel County

Equity No. 21,059

Richard L. Borden, et al.,
Plaintiffs,

v.

Albert W. Ward, et al.,
Defendants.

MEMORANDUM OF OPINION AND DECREE

In the age-old, continuing, and unequal battle between the tax collectors and the taxpayers,[1] the taxpayers mount yet another assault upon the citadels with a Bill of Complaint filed 4 October 1972, and amended 6 February 1973. They allege they pay "ordinary" taxes in Talbot and Anne Arundel Counties to both the Counties and the State of Maryland. They say that they have been required to pay more than their fair share of taxes because their property was recently re-assessed,[2] while the assessment of others was not even reviewed in violation of Sec. 232(8)(a), Art. 81, Code. That Section requires an annual review of all assessments.

Against the broad range of relief the Petitioners pray, some of the Respondents move for partial summary judgment and some for summary judgment as to: (1) any refund of taxes paid for fiscal year 1972-1973; (2) any injunctive relief against the collection of taxes for the fiscal year 1972-1973; (3) any injunctive relief against the consequences of the re-assessments of Petitioners' property in 1971 and 1972; (4) any injunctive relief forbidding the collectors to prepare

[1] To paraphrase an old Southern folk saying about black people: A taxpayer's got two chances — slim, and none at all.

[2] It seems that any re-assessment is always upwards.

and issue tax bills for fiscal year 1973-1974 based on the 1971 or 1972 assessments; (5) any injunctive relief forbidding the collectors to prepare and issue tax bills reflecting any increase in tax liability because of higher assessment in 1971 or 1972; and (6) any refund or injunctive relief for the classes the individual petitioners purport to represent.

A review of the Code and of the decisions interpreting it reveal a system as despotic as the one our forefathers fought a revolution to escape. At common law, money once in the sovereign's clutches could not be pried loose by any action in court,[3] *Rapley v. Montgomery County*, 261 Md. 98 (1971), whether paid by mistake, or under an unconstitutional law, or otherwise. Refunds of amounts wrongfully exacted are a matter of grace with the Legislature; assessments "erroneously" made include even those void because not made in accordance with the law, *Wasena Housing Corp. v. Levay*, 188 Md. 383 (1946). Citizens who believe others are not paying their fair share may sue the assessor to restrain him from continuing an illegally low assessment, *Schley v. Lee*, 106 Md. 390 (1907), *County Com'rs v. Buch*, 190 Md. 394 (1947);[4] but one public-spirited and financially able to do so can bring no sure benefits to his fellow sufferers; class actions are not allowed on appeal to the Tax Court, *Hooks v. Comptroller*, 265 Md. 380 (1972). Since refunds are a matter of grace, it follows that the Legislature can prescribe the exclusive machinery by which a citizen seeks justice, *Wasena, supra*, at page 394.[5]

The machinery the Legislature has provided as to refunds is set out in Secs. 213 and 214, Art. 81, Code. Virtually

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[3] Judge Singley's review of the law in *Rapley* prompts one to think that all of us should reflect more often upon the difference between being a subject of a sovereign, and being a citizen among a sovereign people whose government is supposed to be its servant. Nor can one be proud of an agent who is unjust.

[4] A more pernicious policy to keep a people divided and restive is difficult to conjure up.

[5] The United States Supreme Court has forced one exception not applicable here, *Sears, Roebuck v. State Tax Comm.*, 214 Md. 556 (1957), which followed *Hillsborough Township v. Cromwell*, 90 L. Ed. 358 (1946).

identical in substantive provisions (one applies to State taxes and one to County and Baltimore City taxes), they require a citizen to apply to the collector in writing. But he is wasting his time if his claim for a refund is bottomed on a claim that his assessment was erroneous or excessive[6] if the assessment is final. Assuming there was no appeal, the assessment is final on the first day of January next preceding the July in which the fiscal year begins.[7] For those Petitioners who did not appeal, as provided by the tax law,[8] the assessments have been final for some time.

As to the injunctive relief sought, *Com'rs of Alleghany County v. Union Mining Co.*, 61 Md. 545 (1884) seems to be dispositive of it, if the "exclusive" rule of *Wasena* is not. There the Court of Appeals said, at page 548:

> "It is only when the tax itself is clearly illegal, or the tribunal imposing it has clearly exceeded its powers, or the rights of the taxpayers have been violated, that the interposition of the special remedy by injunction can be successfully invoked, *and only then when no appellate tribunal has been created with power to remedy the wrong.*" (Emphasis supplied.)

The Legislature has provided an "appellate tribunal" with power to remedy the wrong. It follows that the motions must be granted.

It appearing that there is just no reason for delay, the Clerk will be directed to enter final decrees.[9]

Whereupon, it is this 25th day of June 1973, by the Circuit Court for Anne Arundel County ADJUDGED, ORDERED and DECREED:

That the Petitioners Borden, Barba, Ford, Merson, Tabler, and Hunt and the classes they purport to represent have no

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[6] The Petitioners' specific claim is that others' assessments are too low. This seems to be another way of saying their own is excessive, or "erroneous", as *Wasena* defined it.

[7] Secs. 29A(a) and 29A(b), Art. 81.

[8] Secs. 255 and 256, Art. 81.

[9] Rule 605, M.R.P.

right to a refund of any State or County taxes for fiscal year 1972-1973.

That Petitioners Borden, Barba, Ford, Merson, Tabler, and Hunt and the classes they purport to represent have no right to any injunctive relief from the collection of State and County taxes for fiscal year 1972-1973;

That none of the Petitioners and the classes they purport to represent is entitled to injunctive relief of any kind with respect to the consequences of the 1971 and 1972 re-assessments, including the preparation and issuance of tax bills for fiscal 1973-1974;

That as to Respondents Carter, Anne Arundel County, Maryland, The County Council of Anne Arundel County, Mielke, The County Commissioners of Talbot County, and Goldstein, the Bill of Cmplaint be, and it is hereby, dismissed;

That all of the above be entered as final decrees.

JAMES L. WRAY,
Judge.

MEMORANDUM OF OPINION AND DECREE

Certain aspects of this proceeding, decided on 25 June 1973, are now on appeal. The Petitioners now move for a summary judgment as to the remaining issues.

Before considering the merits, there is to be decided Carter *et al's* Motion for Stay of Proceedings Pending Appeal.[1] They first argue that the Petitioners have elected a remedy by appealing from the decrees of 25 June 1973. That does not appear to be so. Since those decrees were final, the Petitioners were compelled to appeal when they did lest they lose that right.

The movants also argue that Petitioners continue to try to represent classes when the classes are as yet not suffi-

[1] The movants' standing to make the Motion is assumed, though the Bill of Complaint was dismissed as to them.

ciently delineated. With the view this Court takes of the merits, whether the Petitioners represent classes or not is irrelevant.

Another argument is that all governmental bodies with tax levying authority in the State should be made Defendants. They cite no authority for this proposition, nor has any been found. The Petitioners do not claim to represent certain classes of taxpayers throughout the State, but only those in Anne Arundel and Talbot Counties. It would seem a dubious postulate that an Anne Arundel County taxpayer would have the standing to attack the assessment practices in a County where he owned no property and paid no taxes. Worth noting, too, is the absence of any clamor from other taxing authorities for leave to intervene herein. Besides this, the primary attack is on the assessment procedure, which is under State control.

That "the impact of the relief prayed for" may be felt by other subdivisions is no reason to delay if the Petitioners are entitled to relief.

Finally, if the Court understands them, the movants allege that this Court is without jurisdiction because certain issues are now before the Court of Special Appeals. But that can not be true of those issues that are not before the Court of Special Appeals if M.R.P. 605a means what it says.[2] The Motion will be denied.

In their Motion for Summary Judgment, supported, they say, by 278 pages of depositions, the Petitioners seek a declaratory decree that:

1. Respondents' assessment procedure for residential property in Anne Arundel and Talbot Counties has not, and, if continued, will not (a) effect a continuing method of annual review and reassessment of all properties as required by Article 81, Section 232(8)(a) and (b) and is therefore, in

[2] The Court of Appeals reminds us forcefully and frequently that all of the Rules say what they mean and mean what they say, "precise rubrics" though they may not be to some of us less gifted than the members of that Court.

contravention of the law of Maryland; (b) conform to the requirements of Article 81, Section 14 requiring that all real property shall be assessed at full cash value as of the date of finality minus an allowance for inflation; (c) conform to Article 81, Section 232(4) mandating that all persons shall be assessed alike for like kinds of property, and (d) conform to Article 15 of the Declaration of Rights and Section 1 of the Fourteenth Amendment of the Constitution of the United States.

2. The tax levies placed upon Petitioners and members of their respective classes as a result of the 1971 reassessment are void and illegal in that Petitioners and the members of their classes have been forced to pay a greater tax burden than that required and permitted by law, or, in the alternative, that any increase in tax levies as a result of the 1971 reassessment in Anne Arundel and Talbot Counties is void and illegal in that Petitioners and the members of their respective classes have been forced to pay a greater tax burden than that required and permitted by law.

3. The reassessments of Petitioners Welch, Kendrick, Sizer and Bauman (the 1972 Petitioners) and the classes they represent are void and illegal in that Petitioners and the members of their classes have been reassessed in contravention of the laws of Maryland and Section 1 of the Fourteenth Amendment to the Constitution of the United States as set forth in the Amended Petition.

The Petitioners also claim entitlement to an injunction:

(a) Forbidding Respondents Pumphrey and McDaniel to value and assess residential property located in Anne Arundel and Talbot Counties on any other basis than an annual review and reassessment as required by Article 81, Section 232(8)(a) and (b).

(b) Requiring the Respondents Director, the Chief Supervisor and the Department forthwith to execute a continuing method of assessments so that all assessable real property in Anne Arundel and Talbot Counties be thoroughly reviewed once a year and reassessed annually if such review discloses a change in value.

(c) Requiring the Respondents Director and the Department forthwith to formulate, pursuant to Article 81, Section 244, a uniform plan for the assessment of property meeting the requirements of Article 81, Section 232(8) (a) and (b).

The Declarations sought in paragraphs two and three must be denied for the reasons stated in the Memorandum of Opinion filed on 25 June 1973. The Respondents' review and reassessment procedures will be considered.

Vinton Thomas Bull, deposed on 26 March 1973, was employed as an assessor in Anne Arundel County in 1949, became the Supervisor of Assessments in 1957, and continued in that post until 31 December 1972. His office gathered information from deeds for a sales analysis, sought a regular flow of copies of building permits to keep up with new construction, and tried to keep informed about changes in zoning. In addition, his field men kept their eyes open to changes in the areas to which they were assigned. A draftsman plotted property transfers on tax maps.

A review and analysis of sales data at year's end constituted the "general review program."[3] This analysis indicated where property values were apparently rising rapidly enough to indicate a reassessment, sometimes after a physical view of the property and sometimes without one. A review of the "oldest areas"[4] led to plans to review them by a physical viewing for reassessment. All of this was subject to the limitations of never having enough manpower. While the State paid 60% of an assessor's salary, and the County 40%, the County on one recent occasion paid all of the bill of a private appraisal company to "help us get caught up."

The State Department of Assessments and Taxation could give a "go-ahead signal" to hire more men, subject to County approval. For many years, the Planning and Zoning Depart-

[3] Dep. 12 and 13.

[4] The Court understands this term to mean those areas longest without a review or physical viewing.

ment handicapped the assessment process by failing to furnish information on any regular basis.[5]

In his deposition of 9 May 1973, James Edward McDaniel, Supervisor of Assessments for Talbot County, outlined a method of proceeding similar to that described by Mr. Bull, though things are a little more catch-as-catch-can on the Eastern Shore. Some people build without building permits. Some permit offices do not furnish copies to the Assessor's office on a regular basis.[6]

The Respondents have filed an affidavit from William H. Riley, the State's Supervisor of Assessments, which says that Anne Arundel County now has five more assessors and Talbot County one more. From this, the Respondents argue that the Petitioners are entitled to no relief, there being no showing that there is any present danger that all assessments in the two Counties will not be reviewed in this year, and, where indicated, that reassessments will not be done in this year. The facts are too frail to support the weight of the argument. The affidavit says additional assessors are afforded "From time to time, *dependent on need and budgetary limitations.*" The affidavit does *not* say, whether by design or oversight, that the two Counties now have the capability to do what Section 232(8)(b) requires.

From a review of the materials submitted, it appears that the assessors are doing an acceptable job with respect to the assessment review Section 232(8)(a) requires, but are falling short of enforcing "a continuing method of real property reassessment" that Section 232(8)(b) requires.[7] The Petitioners' standing to bring the Respondents to task has already been decided, *Schley v. Lee*, 106 Md. 390 (1907); *County Com'rs v. Buch*, 190 Md. 394 (1947).

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[5] One must wonder if certain public servants need Sec. 220, Art. 81, Code, read to them as encouragement.

[6] These people, too, would seem to need the knowledge of Sec. 220.

[7] This is not to be taken to impugn in any way the Respondents' integrity. Legislative imposition of stringent standards while withholding funding adequate to meet the standards is nothing new.

Whereupon, it is this 29th day of August 1973, by the Circuit Court for Anne Arundel County, ADJUDGED, ORDERED and DECREED:

That the Motion for Stay of Proceedings Pending Appeal be, and it is hereby, denied;

That the "State Respondents" be, and they are hereby, enjoined to fully discharge their obligations under Sec. 232(8) (b) Art. 81, Code;

That the "State Respondents" submit to this Court within thirty days a detailed description of how they propose to discharge fully their obligations under Sec. 232(8) (b), Art. 81, Code.

JAMES L. WRAY,

Judge.

APPENDIX B — STATUTES

DECLARATION OF RIGHTS

Article 15. Poll taxes prohibited; paupers not to be assessed; uniformity of taxation.

That the levying of taxes by the poll is grievous and oppressive and ought to be prohibited; that paupers ought not to be assessed for the support of the government; that the General Assembly shall, by uniform rules, provide for the separate assessment, classification and sub-classification of land, improvements on land and personal property, as it may deem proper; and all taxes thereafter provided to be levied by the State for the support of the general State Government, and by the Counties and by the City of Baltimore for their respective purposes, shall be uniform within each class or sub-class of land, improvements on land and personal property which the respective taxing powers may have directed to be subjected to the tax levy; yet fines, duties or taxes may properly and justly be imposed, or laid with a political view for the good government and benefit of the community. (1890, ch. 242, rejected Nov. 3, 1891; 1914, ch. 390, ratified Nov. 2, 1915; 1937, ch. 525, rejected Nov. 8, 1938; 1960, ch. 64, ratified Nov. 8, 1960.)

CONSTITUTION

AMENDMENT XIV. — CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPORTIONMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States;

nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

ARTICLE 81

* * * * * *

§ 14. Classification of property; value at which assessed; annual assessment of personal property; real property assessments continuing.

(b) *Valuation.* — Except as hereinafter provided:

(1) All real property directed in this article to be assessed, shall be assessed at the full cash value thereof on the date of finality. The term full cash value as used in this subsection shall mean current value less an allowance for inflation, if in fact inflation exists.

* * * * * *

§ 29A. Dates specified.

(a) *Date of finality; semiannual date of finality; quarterly date of finality.* — From and after December 31, 1965, for the State and every county, incorporated city or town, and taxing district the date of finality is January 1; and the semiannual date of finality is July 1. Montgomery County, Howard County and any incorporated city or town may provide for a quarterly date of finality for the purposes of § 50(c) of this article and that quarterly date of finality is October 1.

* * * * * *

§ 232. Jurisdiction, powers and duties.

The jurisdiction, supervision, powers and duties of the Department herein created, and the Director thereof, shall extend under this article:

* * * * * *

(4) *Supervision of assessments.* — To supervise the assessment of all property in the counties and cities of this State to the end that all taxable property shall be entered upon the assessment rolls and equalized between persons, firms and

corporations, so that all persons, firms and corporations shall be assessed alike for like kind of property.

* * * * * *

(8) *Continuing methods of assessment and review and reassessment.* — (a) To maintain and enforce a continuing method of assessment review, so that all assessable real property in every county and Baltimore City shall be reviewed at least once each year. Property shall be reviewed, in the discretion of the Director of the Department, by the use of property description cards, property location maps, land classification maps, unit value maps, land use maps, zoning maps, records of new construction, sales records, building cost data, private appraisals, or periodic surveys of assessment ratios or by the use of any other materials or information considered by the Director or the Department to be reliable aids in determining property value. In conducting this review, it shall not be necessary that properties be reviewed individually and separately; for the purpose of conducting this review, properties may be grouped into areas, grouped according to character or use, or grouped in any other manner which the Director or the Department considers to be necessary or helpful to the efficient conduct of said review. The Director and the Department shall have the power, at any time, to order and enforce a review of any properties, if such properties have not been reviewed within one year; and it shall be the duty of the Director to order and enforce a review of any properties upon receipt of a request to do so from the final assessing authority for the county or city in which such properties are located.

(b) To maintain and enforce a continuing method of real property reassessment, so that all assessable real property in every county and Baltimore City shall be properly reassessed annually whenever the annual review required in subparagraph (a) hereof discloses a change in value. In addition, the Director and the Department shall have the power, at any time, after consultation with the county commissioners in the several counties, or the appeal tax court where such exists, or the board of municipal and zoning appeals in Baltimore City as the case may be, to order and

enforce a reassessment of any properties, if it appears, after a consideration and evaluation of the results of the annual assessment review required by subparagraph (a) hereof, that the existing assessments upon such properties are erroneous because they are significantly greater or less than the assessments on other similar properties possessing comparable values.

* * * * * *

28 U.S.C.

§ 1257. State courts; appeal; certiorari.

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

(1) By appeal, where is drawn in question the validity of a treaty or statute of the United States and the decision is against its validity.

(2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.

(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States. June 25, 1948, c. 646, 62 Stat. 929.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1301

RICHARD L. BORDEN, ET AL.,

Petitioners,

v.

DIRECTOR, STATE DEPARTMENT OF ASSESSMENTS AND TAXATION, ET AL.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

BRIEF IN OPPOSITION OF RESPONDENT, STATE DEPARTMENT OF ASSESSMENTS AND TAXATION

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RICHARD L. BORDEN, ET AL.,
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DIRECTOR, STATE DEPARTMENT OF ASSESSMENTS AND TAXATION, ET AL.,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

BRIEF IN OPPOSITION OF RESPONDENT, STATE DEPARTMENT OF ASSESSMENTS AND TAXATION

OPINIONS BELOW

The Order of the Court of Appeals of Maryland dated November 26, 1973, denying a Petition for a Writ of Certiorari to the Court of Special Appeals of Maryland is printed in Appendix A of the Petition. The opinion of the Court of Special Appeals, dated October 9, 1973, is printed in Ap-

pendix A of the Petition and is reported in 19 Md. App. 112, 309 A.2d 773. The unreported opinion of the Circuit Court for Anne Arundel County dated June 25, 1973, which was appealed to the Court of Special Appeals of Maryland, is printed in Appendix A of the Petition.

JURISDICTION

The Order of the Court of Appeals of Maryland denying the Petition for a Writ of Certiorari to the Court of Special Appeals of Maryland was entered on November 26, 1973. Within ninety days thereafter, Petitioners filed with this Court a Petition for Writ of Certiorari to the Court of Appeals of Maryland pursuant to 28 U.S.C. §1257(3). This Respondent submits that this Court lacks jurisdiction to review by Writ of Certiorari the Order entered by the Court of Appeals of Maryland since there are adequate and independent state grounds to support the Order, and further, since this matter is now moot.

QUESTIONS PRESENTED

1. Whether adequate and independent State grounds support the decision below denying to Petitioners, in a Maryland equity court, tax refund and injunctive relief against their real property assessments, where Petitioners failed to utilize or exhaust their statutory administrative remedies, and where the relief sought by Petitioners could have been granted by those administrative tribunals?

2. Whether the availability of relief under *Hillsborough Township v. Cromwell*, 326 U.S. 620 (1946) is a moot question where there was no finding on the merits of that Petitioners' reassessments were violative of the Fourteenth Amendment?

3. Whether the Court below correctly found that there had been no showing of a purposeful discrimination against Petitioners?

STATUTES INVOLVED

The statutes involved are the following Maryland tax statutes in the Annotated Code of Maryland (1969 Replacement Volume and 1973 Cumulative Supplement):

Volume 7, Article 81

Section 2 (20)
Section 29 (a) and (b)
Section 213
Section 214 (a)
Section 229 (l)
Section 232 (8) (a) and (b)
Section 255 (a) and (b)
Section 256 (a)

These statutes are printed in Appendix A of this Brief in Opposition. Article 15 of the Declaration of Rights of the Constitution of the State of Maryland, Section 1 of the Fourteenth Amendment to the Constitution of the United States and Sections 232 (8) (a) and (b) of Article 81 of the Annotated Code of Maryland are printed at pages 21a-24a of Appendix B of the Petition.

STATEMENT OF THE CASE

Petitioners are owners of real property in Anne Arundel and Talbot Counties, Maryland, whose properties were reassessed in either 1971 or 1972 for purposes of *ad valorem* taxation. Alleging that the assessments were in whole or in part void and illegal under State statutes and violative of State and federal constitutional uniformity principles, Petitioners sought in this proceeding, *inter alia*, to have a Maryland equity court (the Circuit Court for Anne Arundel County) enjoin various State and County officials from utiliz-

ing those assessments for tax purposes, and order a refund of any taxes based on those assessments. Factually, Petitioners contended that while their properties had been reassessed, other properties in the two counties which had changed in value had not been reassessed and that this was contrary to Sections 232(8) (a) and (b) of Article 81 of the Annotated Code of Maryland, providing for annual reviews of all assessable real properties and reassessments of such properties as to which the review disclosed a change in value. They further alleged that contrary to Sections 232(8) (a) and (b), reassessments were made on a three-year rotational basis so that one-third of the residential properties in each county were reviewed for reassessment each year.

Thereafter all Respondents moved for summary judgment contending that a Maryland equity court has no power to grant relief from real property assessments or taxes based thereon. On June 25, 1973, the Circuit Court granted that motion holding that an administrative tribunal had been created to remedy the wrongs complained of by Petitioners and that they must utilize and exhaust those remedies; and further that similar statutory remedies existed for obtaining a refund of taxes.

That decision was affirmed by the Court of Special Appeals on October 9, 1973, and on November 26, 1973, the Court of Appeals denied a Petition for Writ of Certiorari. It is that ruling which Petitioners seek to bring before this Court.

The June 25, 1973, decision of the Circuit Court did not pass on the merits of Petitioners' allegations, *i.e.*, conformity of assessment practices with substantive law. On July 11, 1973, Petitioners moved for summary judgment on these issues. The Circuit Court, on August 29, 1973, ruled that the assessing authorities were "falling short of enforcing a continuing method of real property reassessment that Section

232(8)(b) requires," due to a lack of funding. Although Petitioners had expressly sought in their motion a declaration that the assessment practices were in violation of State and federal constitutional provisions, there was no finding by the Circuit Court that Respondents' practices intentionally or arbitrarily discriminated against Petitioners. (Appendix A of the Petition at 15a-20a.) Neither Petitioners nor Respondents appealed that decision.

ARGUMENT

I.

ADEQUATE AND INDEPENDENT STATE GROUNDS SUPPORT THE DECISION BELOW DENYING TO PETITIONERS, IN A MARYLAND EQUITY COURT, TAX REFUND AND INJUNCTIVE RELIEF AGAINST THEIR REAL PROPERTY ASSESSMENTS, WHERE PETITIONERS FAILED TO UTILIZE OR EXHAUST THEIR STATUTORY ADMINISTRATIVE REMEDIES, AND WHERE THE RELIEF SOUGHT BY PETITIONERS COULD HAVE BEEN GRANTED BY THOSE ADMINISTRATIVE TRIBUNALS.

Under Maryland law, recovery of taxes paid is precluded, except to the extent that the taxing statute provides therefor. *Rapley v. Montgomery County*, 261 Md. 98, 110, 274 A.2d 124, 130 (1971). Sections 213 and 214 of Article 81 of the Annotated Code of Maryland provide the exclusive method for obtaining a refund based on erroneous or excessive real property assessment. *Wasena Housing Corp. v. Levay*, 188 Md. 383, 394, 52 A.2d 903, 908 (1947) ("word 'erroneous' is broad enough to cover all types of error, even those that may invalidate an assessment or render it void. . . . [T]he remedy by way of appeal is exclusive in this type of case.") Accordingly, both the Circuit Court and the Court of Special Appeals held that an equity court lacks power to order a tax refund in this case.

The procedure for challenging *ad valorem* real property assessments is also clearly defined by the Maryland revenue

laws. Pursuant to Section 29(a) and (b) of Article 81 of the Annotated Code of Maryland, Petitioners were entitled to, and received, notice at least twenty days before the "date of finality" of their proposed reassessments. Under Section 255(a) of Article 81, Petitioners had the right to demand at any time before the date of finality a hearing before the assessing officials as to their assessments. If dissatisfied with the results of that hearing, they had under Section 255(b) a right to a further *de novo* hearing before the county commissioners or appeal tax court, if one had been created by the county commissioners. They thereafter had the right to a *de novo* appeal to the Maryland Tax Court under Section 256(a) of Article 81, and Section 229(l) of Article 81 grants a further right of appeal to the Court of Appeals of Maryland from any Maryland Tax Court decision. Thus, all of the Petitioners had the *right* to ultimately appeal to the Court of Appeals of Maryland had they utilized their administrative remedies.

These administrative procedures also would have provided Petitioners with the relief they seek herein, upon a showing of an intentional and arbitrary discrimination. In *Sears, Roebuck & Co. v. State Tax Commission*, 214 Md. 550, 136 A.2d 567 (1957), an administrative appeal, the evidence showed that certain personal property was assessed at full value, while real property was assessed at only a portion of full value, and that real and personal property were not separately classified for purposes of assessment. On the authority of *Hillsborough Township v. Cromwell*, 326 U.S. 620 (1946), the Court of Appeals, finding intentional and arbitrary discrimination, directed the reduction of the assessment of the taxpayer-appellant's personal property. The Maryland Tax Court has granted identical relief on the authority of *Hillsborough Township, supra* upon the showing of an intentional and arbitrary discrimination. See *Boothe*

Computer Corporation v. State Department of Assessments and Taxation, 2 C.C.H. Md. State Tax Rptr. ¶200-605 (1970); *Xerox v. State Department of Assessments and Taxation*, 2 C.C.H. Md. State Tax Rptr., ¶200-694 (1973).

Under Maryland law a court of equity will interfere with the collection of taxes only "when no appellate tribunal has been created with power to remedy the wrong." *Commissioners of Allegany County v. Union Mining Co.*, 61 Md. 545, 548 (1884). Compare *Reiling v. Comptroller*, 201 Md. 384, 388-89, 94 A.2d 261, 264 (1953), where a taxpayer sought a declaration in an equity court that his income tax assessment was void:

> "In tax assessment cases there are special reasons why there should be finality upon failure to exercise the statutory right of appeal and collateral attack should be prohibited. . . . [T]he [statutory] remedy by way of appeal from the assessment was exclusive. . . ."

The failure of Petitioners to utilize the statutory procedures created for the hearing of real property assessment challenges, and the availability of the relief they seek through those procedures upon a showing of intentional and arbitrary discrimination, therefore, provides an adequate and independent State ground for the decision in this case.

Thus, the Court of Special Appeals of Maryland correctly distinguished *Hillsborough Township, supra*, finding "no uncertainty surrounds a Maryland remedy available to the named appellants" (Appendix A of the Petition at 8a). As such, no federal question is presented in this case.

II.

THE AVAILABILITY OF RELIEF UNDER TOWNSHIP OF HILLSBOROUGH v. CROMWELL, 326 U.S. 620 (1946), IS A MOOT QUESTION SINCE THERE WAS NO FINDING ON THE MERITS THAT PETITIONERS' REASSESSMENTS WERE VIOLATIVE OF THE FOURTEENTH AMENDMENT.

The review which Petitioners seek herein is of only that ruling below that a court of equity could not grant the relief requested as to tax refunds or an injunction against the use for tax purposes of the reassessments of their properties. Thereafter, Petitioners sought and received a declaration on the merits that the assessment officials were "falling short of enforcing a continuing method of real property reassessment that Section 232(8) (b) requires," due to a lack of funding (Appendix A of the Petition at 19a).

At the same time, Petitioners sought a declaration that the assessment procedures were in violation of Article 15 of the Maryland Declaration of Rights and Section 1 of the Fourteenth Amendment of the Constitution of the United States (Appendix A of the Petition at 17a). The Circuit Court, however, rendered no declaration that Petitioners' reassessments were intentionally and arbitrarily discriminatory, and no timely appeal has been entered from that decision by any party. Petitioners having either been factually unable to, or having failed to, secure such a finding on the merits, the question of the availability of the relief afforded by *Hillsborough Township, supra*, is moot in this case.

III.

THE COURT BELOW CORRECTLY FOUND THAT THERE HAD BEEN NO SHOWING OF A PURPOSEFUL DISCRIMINATION AGAINST PETITIONERS.

In addition to finding that this case was outside of the scope of *Hillsborough Township, supra*, because the named Petitioners' statutory remedies were adequate, the court

below also found *Hillsborough* inapplicable because "there is no showing of a purposeful discrimination against [Petitioners]" (Appendix A of Petition at 8a). In so ruling, the lower court (not having the merits of the cause before it) assumed the existence of the alleged three-year rotational reassessments in each county (*i.e.*, that one-third of the properties of each county were reassessed each year on a rotating basis), and further assumed that such practices were not in conformity with Sections 232(8) (a) and (b) of Article 81 of the Annotated Code of Maryland (Appendix A of Petition at 6a, 9a).[1] That decision, that no constitutional discrimination, either state or federal, had been shown, is correct.

This Court has previously approved on federal constitutional grounds practices analogous to the three year rotational assessments alleged herein. In *Thomas v. Gay*, 169 U.S. 264, 281 (1898), it was stated:

> "[I]t is complained that this law violates the principle of uniformity, and operates as an unjust discrimination, because it provides for an assessment of cattle, kept and grazed on the Indian reservations, at a different time than that provided for the assessment of personal property, including cattle, in the organized county.
>
> "It is not unusual for tax laws to authorize the assessment of different classes of property at different dates, and even of the same classes of property in different localities at different dates. Such matters of regulation must be supposed to be within the power of the State or territory, and to have their reasons in special facts known to the Legislature."

Compare *Rogan v. County Commissioners of Calvert County*, 194 Md. 299, 71 A.2d 47 (1950) where the Court of Appeals

[1] Effective July 1, 1972, new subsection 232(8)(c) of Article 81 was added, providing in part that, "All assessable real property in every county . . . shall be physically inspected for reassessment at least once in every three (3) years." Subsections 282(8)(a) and (b) were not, however, affected by that amendment.

sustained on equal protection grounds a former statute providing for assessments of the same classes of property in different districts in different years so that all assessments in a given county would be reviewed in a five year period, citing *Thomas v. Gay, supra.*

When viewed in this light, Petitioners' contention that the Circuit Court's finding on the merits (a decision which is not before this Court) that the assessing officials were not in full compliance with Section 232(8)(b) of Article 81 constitutes a showing of constitutionally discriminatory assessments within the meaning of *Hillsborough Township, supra,* cannot stand. Their claim (Petition at 9) that the allegedly illegal assessment practices have continued since 1956 is particularly significant in this regard. As this Court stated in *Nashville, C. & St. L. Ry. v. Browning,* 310 U.S. 362, 369-70 (1940):

> "Since so far as the Federal Constitution is concerned, a state can put railroad property into one pigeonhole and other property into another, the only question relevant for us is whether the state has done so. If the discrimination of which the Railway complains has been formally written into the statutes of Tennessee, challenge to its constitutionality would be frivolous. If the state supreme court had construed the requirement of uniformity in the Tennessee Constitution so as to permit recognition of these diversities, no appeal could successfully be made to the Fourteenth Amendment. Here, according to petitioner's own claim, all the organs of the state are conforming to a practice, systematic, unbroken for more than forty years, and now questioned for the first time. It would be a narrow conception of jurisprudence to confine the notion of 'laws' to what is found written on the statute books, and to disregard the gloss which life has written upon it. Settled state practice cannot supplant constitutional guarantees, but it can establish what is state law. The equal protection clause did not write an empty formalism into the Constitution. Deeply embedded traditional ways of carrying out state

> policy, such as those of which petitioner complains, are often tougher and truer law than the dead words of the written text. Compare Carino v. Insular Government, 212 U.S. 449, 459, 29 S. Ct. 334, 336, 53 L. Ed. 594. And if the state supreme court chooses to cover up under a formal veneer of uniformity the established system of differentiation between two classes of property, an exposure of the fiction is not enough to establish its unconstitutionality. Fictions have played an important and sometimes fruitful part in the development of law; and the equal protection clause is not a command of candor. So we are of opinion that such a discrimination, not invidious but long-sanctioned and indeed conventional, would not be offensive to the Fourteenth Amendment simply because Tennessee had reached it by a circuitous road. It is not the Fourteenth Amendment's function to uproot systems of taxation inseparable from the state's tradition of fiscal administration and ingrained in the habits of its people."[2]

Thus, since as the court below noted (Appendix A of Petition at 8a-9a) Petitioners do not contend that assessments *within* the one-third of the properties reassessed in each year are discriminatory, no federal equal protection violation has been shown in this case. Hence, if this case presents a federal question, it has been properly decided.

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[2] In this regard Petitioners' quotation from Note, *Inequality in Property Tax Assessments: New Cures for an Old Ill*, 75 Harv. L. Rev. 1374, 1375 (1962) (Petition at page 7) is significant in what it omits therefrom at line 6 by asterisks. It is there stated, citing *Browning, supra:*

> "The Supreme Court has held that such classification, so long as it is reasonable, does not violate the equal protection clause even though it contravenes the State's own law."

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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APPENDIX A — STATUTES

ARTICLE 81

§ 2. Definitions

As used in this article:

(20) The phrase "*date of finality*" means the date as of which assessments become final for the taxable year next following, subject only to correction as herein authorized. The phrase "*semiannual date of finality*" means the date as of which assessments shall be made for all real property becoming assessable up to that time and after the next previous date of finality. The phrase "*quarterly date of finality*" means the date as of which assessments may be made for all real property becoming assessable up to that time and after the next previous semiannual date of finality. These dates are as specified in § 29A of this article.

* * * * * *

§ 29. Notice.

(a) *When required.* — Before (1) any existing valuation of property for tax purposes shall be increased, or (2) any classification of any property changed, or (3) any new valuation of property made against any person; or (4) whenever any person applies for a change in an existing valuation or classification and there is a change or refusal to change an existing valuation or classification, or (5) whenever a valuation or classification for a given year, or part thereof, has been appealed, but not finally determined, and the same valuation or classification is made for a subsequent year, on property locally assessed, either by the State Department of Assessments and Taxation (acting within its original jurisdiction), the supervisors of assessments for the county or department of assessments of Baltimore City, it shall be the duty of the appropriate authority to notify the person against whom it is proposed to make, increase, change or refuse to change such valuation or classification by a written or printed notice, appointing a day for such person to make answer thereto or present such proof as he may desire in the premises. Failure to send a notice of assessment in the class of

cases set forth in clause (5) of this subsection shall not void any assessment for a subsequent year but the provisions of § 214A of this article shall be applicable.

(b) *Service.* — Such notice shall be served on such person at least twenty days before the date of finality or the day of hearing appointed therein, in the following manner, that is to say, either (1) by personal service in the manner in which original process in an action of at law is required to be served, by the sheriff, or (2) by leaving a copy of such summons at such person's last place of abode, or (3) by placing a copy of the notice in the United States mail postage prepaid, addressed to such person at his ordinary post-office address for the receipt of mail, in a sealed envelope with the return address of the State Department of Assessments and Taxation, supervisors of assessments or department of assessments of Baltimore City, as the case may be, on the outside, provided that if such person resides or does business in Baltimore City, it shall be sufficient if said envelope be addressed to the residence or place of business of such person as it appears in the then latest edition of the Baltimore City directory or telephone directory, and provided also that a record of the date of mailing and manner of addressing said envelope shall be contemporaneously made and carefully preserved among the records of the appropriate authority, or (4) if the property to be valued or classified be real estate situated in Baltimore City having a street number; and the name of the owner is unknown or does not appear in such directory, then by addressing and mailing an envelope containing a copy of such notice in the manner prescribed in subdivision (3) of this paragraph to such street number a record being similarly kept of the date and manner of such posting, or (5) if the property to be valued or classified be real estate or tangible personal property and the owner thereof is unknown or a nonresident or cannot be found or served in any manner hereinabove authorized, then by serving such notice upon the person, if any, in actual custody and possession thereof or if no person be found in actual possession or custody thereof, then by posting the same conspicuously upon such real estate or tangible personal property; provided that

if the mail address of such person be known, even though he be a nonresident, it shall be the duty of such taxing authority (though not a condition precedent to the validity of the valuation) to mail a copy of the notice to such address.

* * * * * *

§ 213. State taxes.

Whenever any person shall claim to have erroneously or mistakenly paid into the treasury of the State more money for ordinary taxes than was properly and legally chargeable to or collectible from such person he may file with the Comptroller of the State a written demand for the refund thereof, which, if approved by the Comptroller, shall be refunded out of any funds appropriated for such purpose, or, if no such funds are available, shall be certified to the Governor for inclusion in the next budget. In the case of ordinary State taxes erroneously or mistakenly paid to any collector or other agent authorized by law to collect such taxes, claims for refund may be made upon such collector or other agent who, if authorized by the State Comptroller, may refund the same out of any State funds in the hands of such collector or other agent. No refund shall be made, approved or certified in any case where it appears that the assessment upon which such taxes were levied and collected has become final and has not been modified on appeal as provided in this article, and the only basis for the refund is a claim that such assessment was erroneous or excessive; provided, however, that this prohibition shall not apply to any case in which a person has paid a tax bill which is erroneous by reason of any mere mathematical, mechanical or other clerical error by the taxing authority, exclusive of any error of valuation, in the computation, calculation or recordation of the assessment upon which said tax bill is based. Such claim for refund shall be in such form, verified in such manner, contain such information and be supported by such documents as may be prescribed by regulations of the Comptroller, and shall be filed within three years from the date of the payment of the ordinary taxes for which refund is requested.

§ 214. County, municipal or Baltimore City taxes.

(a) *Generally.* — Whenever any person shall claim to have erroneously or mistakenly paid to the county commissioners of any county, or to the collector for such county, or to the collector or other official of any municipality, or to the mayor and city council of Baltimore, or the collector for Baltimore City, more money for ordinary county or city taxes than was properly and legally chargeable to or collectible from such person he may file with the collector in any county or municipality or the appeal tax court in Baltimore City, a written application for the refund thereof, and if approved by such collector, or the said appeal tax court the said county commissioners or the said municipal officials or the mayor and city council of Baltimore shall levy and pay to such person any money that was so paid. No refund shall be made or approved in any case where it appears that the assessment upon which such taxes were levied and collected has become final and has not been modified on appeal as provided in this article, and the only basis for the refund is a claim that such assessment was erroneous or excessive; provided, however, that this prohibition shall not apply to any case in which a person has paid a tax bill which is erroneous by reason of any mere mathematical, mechanical or other clerical error by the taxing authority, exclusive of any error of valuation, in the computation, calculation or recordation of the assessment upon which said tax bill is based. Such claim for refund shall be in such form, verified in such manner, contain such information and be supported by such documents as may be prescribed by regulations of the county commissioners or ordinance of any municipality or ordinance of the mayor and city council of Baltimore and shall be filed within three years from the date of the payments of the ordinary taxes for which refund is requested.

* * * * * *

§ 229. Procedure on appeals to and from Court.

(l) *Appeal to Court of Appeals.* — Any party to the proceedings may appeal from the Court's final order directly to the Court of Appeals.

* * * * * *

§ 255. Hearing before supervisor of assessments and property tax assessment appeal board.

(a) *Before supervisor of assessments.* — With respect to any property assessed locally, any taxpayer, or city, or the Attorney General or Department may demand a hearing before the supervisor of assessments or their respectively designated representatives, as to the assessment of any property or any unit of tax value, or as to the increase, reduction, or abatement of any such assessment, or as to the classification thereof, for the next ensuing year. Except as provided in § 29 (f) of this article, no demand for a hearing shall be granted under this subsection unless answer or protest to a notice as to assessments was made, in the counties or Baltimore City with the supervisor of assessments within twenty days from the date of such notice, or unless application for revaluation or reclassification as to an existing or proposed assessment was made in the counties with the supervisor of assessments before the date of finality for the taxable year in question, or in Baltimore City before October first preceding the taxable year in question; provided however where the taxpayer is required to report personal property in such detail as to show the cost or market value thereof, but the taxpayer fails to report accurately the cost or other data required to establish market value, and the taxpayer claims that the property is assessed at a higher valuation than it would be if it had been reported accurately; then a demand for a hearing shall be granted if such answer or protest to the notice as to the assessment on such property is made within three years from the date of such notice.

(b) *Before property tax assessment appeal board.* — With respect to any property assessed locally, any taxpayer, or city, or the Attorney General or Department on behalf of the State may demand a further hearing before the property tax assessment appeal board as to the assessment of any property or any unit of tax value, or as to the increase, reduction or abatement of, or refusal to increase, reduce or abate, any such assessment, or as to the classification thereof, made by the initial assessing authority for the next ensuing year. No demand for a hearing shall be granted under this sub-

section unless made within thirty days from the date of a final notice from the initial assessing authority as set forth in § 29 (g) of this article.

* * * * * *

§ 256. Appeals to Maryland Tax Court from final assessing authority of city or county.

(a) *In general.* — Any taxpayer, any city, or the Attorney General or Department on behalf of the State, or a supervisor of assessments as provided in § 234 of this article, or the county commissioners of any county where an appeal tax court has been duly created claiming to be aggrieved because of any assessment or classification, or because of any increase, reduction, abatement, modification, change or alteration or failure or refusal to increase, reduce, abate, modify or change any assessment, or because of any classification or change in classification, or refusal or failure to make a change, by any final assessing authority under § 255 of this article, may by petition appeal to the Maryland Tax Court therefrom as provided in § 229 in this article, and said Court shall hear and determine all such appeals within sixty days from the entry thereof. Such appeal shall be taken either (a) within thirty days after the date of the action or failure or refusal to act complained of, or (b) if an address shall have been filed with the final assessing authority appealed from by any person or corporation demanding a hearing as in § 255 provided, then by the person giving such address within thirty days from the date of mailing of the notice of the action by the final assessing authority to the person and address so given or (c) if the appellant is a supervisor of assessments, such appeal shall be taken within thirty days from the date of the final assessing authority sends notice of its action, in writing, by mail or otherwise, to the supervisor of assessments. No appeal on behalf of a taxpayer shall be allowed under this section from a failure or refusal to abate, reduce, or reclassify an existing assessment unless application in writing for such action shall have been filed by the appellant with the final assessing authority appealed from within the time limited for the filing of a demand for a hearing by § 255 of this article.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1301

RICHARD L. BORDEN, ET AL.,
Petitioners,

v.

DIRECTOR, STATE DEPARTMENT OF ASSESSMENTS AND TAXATION, ET AL.,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

BRIEF FOR RESPONDENTS IN OPPOSITION

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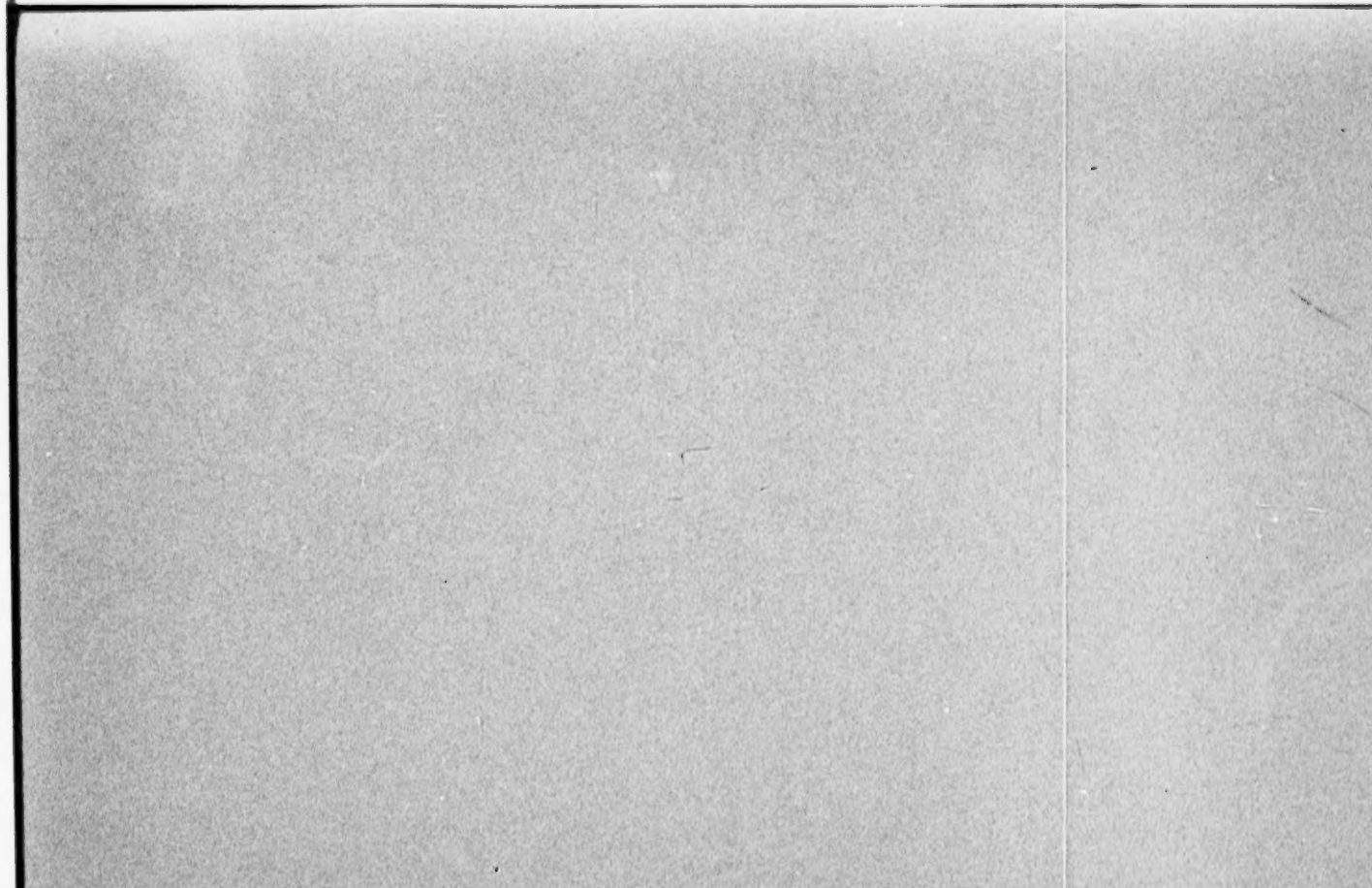

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ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

BRIEF FOR RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The Order of the Court of Appeals of Maryland dated November 26, 1973, denying a Writ of Certiorari to the Court of Special Appeals of Maryland is printed in Appendix A of

the Petition. The opinion of the Court of Special Appeals, dated October 9, 1973, is printed in Appendix A of the Petition and is reported in 19 Md. App. 112, 309 A.2d 773. The unreported opinion of the Circuit Court for Anne Arundel County dated June 25, 1973, which was appealed to the Court of Special Appeals of Maryland, is also printed in Appendix A of the Petition.

JURISDICTION

The Order of the Court of Appeals of Maryland denying the Writ of Certiorari to the Court of Special Appeals of Maryland was entered on November 26, 1973. Within ninety days thereafter, Petitioners filed with this Court a Petition for Writ of Certiorari to the Court of Appeals of Maryland pursuant to 28 U.S.C. §1257(3). Respondents submit that this Court lacks jurisdiction to review by Writ of Certiorari the Order entered by the Court of Appeals of Maryland because there are adequate and independent state grounds to support the Order.

QUESTIONS PRESENTED

1. Whether there are adequate and independent state grounds to support the judgment of the Court of Special Appeals of Maryland denying monetary relief to Petitioners who have not followed or exhausted State administrative procedures established to remedy improper assessments, but who have instead initiated an original action in a Maryland Circuit Court.

2. Whether the Court of Special Appeals of Maryland correctly applied the rule in *Township of Hillsborough v. Cromwell*, 326 U.S. 620 (1946), that, if State taxing authorities have consistently, systematically and intentionally singled out a taxpayer for discriminatory treatment for which

there is no State remedy, the State itself must remove the discrimination.

STATUTES INVOLVED

The statutes involved are the following Maryland tax statutes in the Annotated Code of Maryland (1969 Replacement Volume and 1973 Cumulative Supplement):

Volume 7, Article 81
- Section 2(20)
- Section 14(b)(1)
- Section 213
- Section 214(a)
- Section 214C
- Section 229(l)
- Section 232(8) (a) and (b)
- Section 255(a) and (b)
- Section 256(a)

These statutes are printed in Appendix A of this Brief in Opposition. Article 15 of the Declaration of Rights of the Constitution of the State of Maryland, and Section 1 of the Fourteenth Amendment to the Constitution of the United States are printed at pages 21a-24a of Appendix B of the Petition.

STATEMENT OF THE CASE

The Petitioners are property owners in Anne Arundel or Talbot Counties whose properties were reassessed for *ad valorem* property tax purposes in either 1971 or 1972. They initiated this suit seeking a declaratory judgment that these reassessments were not made in compliance with §232(8) (a) and (b) of Article 81 of the Annotated Code of Maryland 1969 Replacement Volume and 1973 Cumulative Sup-

plement) (Code), which requires all real property to be reviewed annually for the purposes of *ad valorem* tax assessments and, when necessary, reassessed. Petitioners alleged that, although their property was reviewed and reassessed in 1971 or 1972, other property in the two counties was not and that, therefore, both the reassessments of their properties and the taxes levied on those reassessments were void and illegal or, in the alternative, that any tax increases resulting from those reassessments were void and illegal.

For relief, Petitioners requested the Circuit Court for Anne Arundel County, *inter alia*, to enjoin Respondents from collecting property taxes for the fiscal year 1973-74 in Anne Arundel and Talbot Counties on the basis of the alleged illegal assessments and to require the State Department of Assessments and Taxation to refund any tax collected for fiscal 1972-73 based on the challenged reassessments or, in the alternative, to refund any increase in the tax resulting from the reassessments. Petitioners also requested the Circuit Court to enjoin the Supervisors of Assessments for Anne Arundel and Talbot Counties from placing Petitioners' 1971 and 1972 reassessments on the tax rolls or from certifying the tax rolls, and to enjoin the collectors of taxes for Anne Arundel and Talbot Counties from preparing and issuing tax bills for fiscal 1973-74 based on the alleged illegal assessments or, in the alternative, from preparing and issuing tax bills that reflected increases due to the reassessments in either 1971 or 1972.

The Respondents moved for summary judgment on the ground that, regardless of the outcome on the merits, Petitioners were not entitled to the requested relief.

On June 25, 1973, the Circuit Court for Anne Arundel County (Wray, J.), granted Respondents' motion for summary judgment, holding that Petitioners were not entitled to a refund of their taxes or to injunctive relief, since they

had failed to comply with the procedures established by the General Assembly of Maryland for obtaining tax refunds and for challenging their own reassessments. The judgment of the Circuit Court was affirmed by the Court of Special Appeals of Maryland on October 9, 1973. A petition for a writ of certiorari to the Court of Special Appeals was denied by the Court of Appeals of Maryland on November 26, 1973.

On disposition of the issues related to assessment practices which were not presented for decision by Respondents' motion for summary judgment, the Circuit Court for Anne Arundel County granted summary judgment to Petitioners upon a finding that, although the State assessing authorities were complying with Section 232(8)(a), they were "falling short of enforcing a continuing method of real property reassessment that Section 232(8)(b) requires." This the Circuit Court attributed to a lack of funding.[1]

There was no finding that the Respondents intentionally or arbitrarily sought to discriminate against Petitioners or that Petitioners' reassessments were made in violation of the Fourteenth Amendment. Neither Petitioners nor the Respondents appealed this decision.

ARGUMENT

I.

THE FAILURE OF PETITIONERS TO EXHAUST ADMINISTRATIVE REMEDIES FOR CHALLENGING *AD VALOREM* PROPERTY TAX ASSESSMENTS PROVIDES AN ADEQUATE AND INDEPENDENT STATE LAW GROUND FOR DENYING PETITIONERS' REQUEST FOR MONETARY RELIEF.

A.

The common law rule in Maryland permits a taxpayer to obtain a refund of taxes previously paid only if and as expressly provided by statute. *See Rapley v. Montgomery*

[1] Appendix A of the Petition at 19a and 19a n. 7.

County, 261 Md. 98, 110-111, 274 A.2d 124, 130 (1971). In the case of refunds for *ad valorem* property taxes, sections 213, 214(a) and 214C of Article 81 of the Maryland Code, provide the exclusive procedure for obtaining a refund. Petitioners, however, failed completely to utilize these statutory procedures and, instead, brought an original suit in the Circuit Court for Anne Arundel County seeking a refund of *ad valorem* property taxes. It was in this context that the Court of Special Appeals, citing sections 213 and 214 of Article 81 of the Code, affirmed the holding of the lower court that a Maryland Circuit Court lacks jurisdiction in an original action to order a refund of *ad valorem* taxes previously paid. *See* Appendix A of the Petition at 7a. This decision clearly raises no federal question.

B.

The General Assembly of Maryland has established procedures by which a taxpayer may challenge the assessment of his property. Petitioners whose property was reassessed had a right, under §255(a) of Article 81 of the Code, to demand a hearing before the Supervisors of Assessments of Anne Arundel and Talbot Counties, respectively, "as to the assessment of any property . . ." At that hearing, they could have made their case for the reduction of their assessments. Section 255(b) of Article 81 of the Code provides a right to a further hearing before the final assessing authority of the county "as to the . . . refusal to . . . reduce . . . any such assessment". Furthermore, §256(a) of Article 81 provides for an appeal to the Maryland Tax Court for anyone "aggrieved because of . . . refusal . . . to reduce . . . any assessment", and an adverse decision from the Maryland Tax Court may be appealed to the Court of Appeals of Maryland pursuant to §229(l) of Article 81 of the Code.

These statutory procedures permit a taxpayer to obtain the type of relief sought by Petitioners. In *Sears, Roebuck & Company v. State Tax Commission of Maryland*, 214 Md. 550, 136 A.2d 567 (1957), the taxpayer, following the prescribed administrative procedures, challenged the assessment of certain personal property on the ground that the State Tax Commission, in assessing the property, did not consider the effect of inflation in its determination of assessable value of personal property, but did consider its effect on the assessable value of real property and granted an allowance for that effect. The Court of Appeals of Maryland found that this was an *intentional and arbitrary* discrimination and, on that basis rejected the State's contention that the taxpayer's only remedy was to seek an upward revision in the assessments of other taxpayers, holding that "the state itself must remove such discrimination". 214 Md. at 559, 136 A.2d at 572.

Sears, Roebuck & Company, supra, clearly indicates that State remedies are adequate and that a taxpayer may obtain the type of relief sought by these Petitioners if he can demonstrate that the taxing authorities have singled him out for discriminatory treatment.[2] The taxpayer must, however,

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[2] Petitioners contend that, in order to fall within the holding of *Sears, Roebuck & Company, supra*, it is necessary to show that their assessments are "too high", and that they are barred from relief if they can only show that other assessments are discriminatorily low. There are, however, no reported Maryland cases in which a court has denied a taxpayer the relief required by *Hillsborough Township, supra*, in the face of a finding that the assessing authorities purposefully discriminated against a taxpayer by assessing other property too low. It is submitted that the term "too high" does not refer to the statutory assessment standard of "full cash value" (§14(b)(1) of Code Art. 81), but rather to an assessment which is "too high" because it was arrived at by employing discriminatory assessments methods or techniques. *See Boothe Computer Corporation v. State Department of Assessments and Taxation*, 2 CCH Md. State Tax Rptr. ¶200-605 (Md. Tax Court 1970), in which the Maryland Tax Court held that the practice of the State Department of Assessments and Taxation

follow those procedures established by the legislature for challenging an assessment. The rule in Maryland is that a court of equity will interfere with the collection of taxes only "when no appellate tribunal has been created with power to remedy the wrong." *Commissioners of Allegheny County v. The Union Mining Co.*, 61 Md. 545, 548 (1884). Rather than follow the prescribed procedures for challenging their assessments, Petitioners brought an original action in the Circuit Court in an effort to have those assessments reduced. The Petitioners failure to challenge their real property assessments as prescribed by statute, then, provides an adequate and independent State law ground for denying Petitioners *any* monetary relief.

II.

THE QUESTION OF WHETHER PETITIONERS ARE ENTITLED TO THE RELIEF REQUIRED BY *TOWNSHIP OF HILLSBOROUGH v. CROMWELL*, 326 U.S. 620 (1946), IS MOOT, SINCE THERE WAS NO FINDING THAT THE REASSESSMENT OF PETITIONERS' PROPERTY WAS MADE IN VIOLATION OF THE FOURTEENTH AMENDMENT.

Respondents moved for, and were granted, a summary judgment on the ground that, *regardless* of the outcome on the merits as to the validity of the challenged assessment practices, Petitioners were not entitled to the monetary relief they requested, as distinct from whatever declaratory or

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of "assessing leased equipment owned by a manufacturer-lessor at manufacturer's cost, while assessing the same equipment owned by a non-manufacturer-lessor at the purchase price is intentional, arbitrary" and in violation of the 14th Amendment. For relief the Maryland Tax Court, citing *Sears, Roebuck & Co., supra*, and *Hillsborough Township, supra*, ordered the State Department of Assessments and Taxation to reassess petitioner's property "on the same basis as that of similar property in the same subclassification i.e., at manufacturer's cost". 2 CCH Md. State Tax Rptr. ¶200-605 at 10,490. *See also Xerox Corporation v. State Department of Assessments and Taxation*, 2 CCH Md. State Tax Rptr. ¶200-604 (Md. Tax Court 1973).

injunctive relief they might have been entitled to against the State assessing authorities. It is from that decision which Petitioners are here seeking a writ of certiorari. Subsequent to the decision on the question of relief against these Respondents, the Circuit Court for Anne Arundel County decided the issues related to assessment practices raised by Petitioners. The court found that the Respondents were complying with the review requirements of §232(8)(a), but that they were "falling short" of complying with the annual reassessment requirements of §232(8)(b), which the court attributed to a lack of funds for the necessary number of assessors.[3] There was *no* finding that the Respondents intentionally or arbitrarily sought to discriminate against Petitioners or that the reassessment of Petitioners' property was made in violation of the Fourteenth Amendment. Neither the Petitioners nor the Respondents have appealed the Circuit Court's decision. Since there was no finding that the Respondents violated the Fourteenth Amendment, the question of whether the relief available in such cases is consistent with the holding in *Hillsborough Township, supra*, is now moot.

III.

THE COURT OF SPECIAL APPEALS OF MARYLAND CORRECTLY HELD THAT PETITIONERS WERE NOT ENTITLED TO REDUCTIONS OF THEIR ASSESSMENTS IN THE ABSENCE OF A SHOWING THAT THEY HAD BEEN SINGLED OUT FOR DISCRIMINATORY TREATMENT IN THE REASSESSMENT OF THEIR PROPERTIES AND THAT THERE WAS NO ADEQUATE STATE REMEDY.

The Court of Special Appeals held that *Hillsborough Township, supra*, did not compel the relief requested by Petitioners. The court based its decision on the fact that the State of Maryland provides adequate administrative procedures by which a taxpayer may challenge his assessment and the fact that there was "no showing of a purposeful

[3] *See* Appendix A of the Petition at 19a.

discrimination against . . . [taxpayers]". *See* Appendix A of Petition at 8a. It should be noted, moreover, that Petitioners have not challenged the administrative remedies provided by the State of Maryland for challenging property tax assessments.

In *Hillsborough Township, supra,* the taxpayer sought a declaratory judgment in Federal court that the assessment of her personal property was unconstitutional on the ground that the taxing authorities had "consistently, systematically and intentionally singled out Respondent for discriminatory treatment in the assessments of taxes . . ." 326 U.S. at 622. There was, however, no allegation that the assessments of other taxpayers were improper. Noting that the New Jersey courts had consistently held that a taxpayer who had been *singled out for discriminatory taxation* may *not* obtain a reduction in his own assessment, but must seek an upward revision of the assessments of other members of his class, the Court held that the existing state remedy was inadequate and that the state itself was required to remove the discrimination.

The Maryland cases cited by the Court of Special Appeals in its decision are consistent with the holding in *Hillsborough Township, supra.* In *Sears, Roebuck & Company v. State Tax Commission of Maryland, supra,* the court, finding that the assessment was intentionally and arbitrarily discriminatory, rejected the state's contention that the only remedy available to the taxpayer was an action to raise the assessments of other taxpayers. The court, citing *Hillsborough Township, supra,* held that the state itself must remove the discrimination.[4] On the other hand, if there is no showing of a *purposeful or intentional discrimination in the assessment of a taxpayer's property,* the Court of Appeals of Maryland has held that the taxpayer's proper remedy is to seek an

[4] *See also Boothe Computer Corporation v. State Department of Assessments and Taxation, supra; Xerox Corporation v. State Department of Assessments and Taxation, supra.*

upward revision in the assessments of other taxpayers if those assessments were not properly made. *See State Tax Commission v. Chesapeake & Potomac Telephone Co. of Baltimore City*, 193 Md. 222, 235, 66 A.2d 477, 482 (1949).[5] The present case falls into the latter category, since (1) there was no showing of purposeful discrimination and (2) there are adequate administrative remedies.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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Z. H. STAFFORD,
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[5] *Baltimore Steam Packet Co. v. State Tax Commission*, 161 Md. 9, 155 A. 158 (1931) and *Schley v. Lee*, 106 Md. 390, 67 A. 252 (1907), both of which were decided prior to *Hillsborough Township, supra*, do not stand for the proposition that the only remedy available in the case of a discriminatory assessment is an action to raise the assessments of other taxpayers, as is suggested at page 6 of the Petition. *Baltimore Steam Packet Co.* involved a challenge to a tax exemption and not an assessment, and *Schley* was an action to enjoin the Tax Commissioner from using certain assessment procedures.

APPENDIX A — STATUTES

Article 81 of The Annotated Code of Maryland (1969 Replacement Volume and 1973 Cumulative Supplement)

§2(20).

The phrase "date of finality" means the date as of which assessments become final for the taxable year next following, subject only to correction as herein authorized. The phrase "semi-annual date of finality" means the date as of which assessments shall be made for all real property becoming assessable up to that time and after the next previous date of finality. The phrase "quarterly date of finality" means the date as of which assessments may be made for all real property becoming assessable up to that time and after the next previous semi-annual date of finality. These dates are as specified in §29A of this article.

§14.

(b) — Except as hereinafter provided: (1) All real property directed in this article to be assessed, shall be assessed at the full cash value thereof on the date of finality. The term full cash value as used in this subsection shall mean current value less an allowance for inflation, if in fact inflation exists.

§213.

Whenever any person shall claim to have erroneously or mistakenly paid into the treasury of the State more money for ordinary taxes than was properly and legally chargeable to or collectible from such person he may file with the Comptroller of the State a written demand for the refund thereof, which, if approved by the Comptroller, shall be refunded out of any funds appropriated for such purpose, or, if no such funds are available, shall be certified to the Governor for inclusion in the next budget. In the case of ordinary State taxes erroneously or mistakenly paid to any collector or other agent authorized by law to collect such taxes, claims for refund may be made upon such collector or other agent who, if authorized by the State Comptroller may refund the same out of any State funds in the hands of such collector or other agent. No refund shall be made, approved or certified in any case where it appears that the assessment

upon which such taxes were levied and collected has become final and has not been modified on appeal as provided in this article, and the only basis for the refund is a claim that such assessment was erroneous or excessive; provided, however, that this prohibition shall not apply to any case in which a person has paid a tax bill which is erroneous by reason of any mere mathematical, mechanical or other clerical error by the taxing authority, exclusive of any error of valuation, in the computation, calculation or recordation of the assessment upon which said tax bill is based. Such claim for refund shall be in such form, verified in such manner, contain such information and be supported by such documents as may be prescribed by regulations of the Comptroller, and shall be filed within three years from the date of the payment of the ordinary taxes for which refund is requested.

§214.

(a) Generally. — Whenever any person shall claim to have erroneously or mistakenly paid to the county commissioners of any county, or to the collector for such county, or to the collector or other official of any municipality, or to the mayor and city council of Baltimore, or the collector for Baltimore City, more money for ordinary county or city taxes than was properly and legally chargeable to or collectible from such person, he may file with the collector in any county or municipality or the appeal tax court in Baltimore City, a written application for the refund thereof, and if approved by such collector, or the said appeal tax court the said county commissioners or the said municipal officials or the mayor and city council of Baltimore shall levy and pay to such person any money that was so paid. No refund shall be made or approved in any case where it appears that the assessment upon which such taxes were levied and collected has become final and has not been modified on appeal as provided in this article, and the only basis for the refund is a claim that such assessment was erroneous or excessive; provided, however, that this prohibition shall not apply to any case in which a person has paid a tax bill which is erroneous by reason of any mere mathematical, mechanical or other clerical error by the taxing authority, exclusive of any error of valuation, in the computation, calculation or

recordation of the assessment upon which said tax bill is based. Such claim for refund shall be in such form, verified in such manner, contain such information and be supported by such documents as may be prescribed by regulations of the county commissioners or ordinance of any municipality or ordinance of the mayor and city council of Baltimore and shall be filed within three years from the date of the payments of the ordinary taxes for which refund is requested.

§214C.

Appeal from final determination of a claim for refund of ordinary taxes. Any person filing a claim for refund of ordinary taxes under §213 or §214 of this subtitle, or the supervisor of assessments or the Director of the State Department of Assessments and Taxation, as the case may be, on behalf of the State or county or city, may appeal to the Maryland Tax Court from the final determination of the refunding authority. Said appeal shall be taken within 30 days from the date of mailing of the notice of its determination by said authority.

§229(l).

Any party to the proceedings may appeal from the Court's final order directly to the Court of Appeals.

§232(8).

(a) To maintain and enforce a continuing method of assessment review, so that all assessable real property in every county and Baltimore City shall be reviewed at least once each year. Property shall be reviewed in the discretion of the Director of the Department, by the use of property description cards, property location maps, land classification maps, unit value maps, land use maps, zoning maps, records of new construction, sales records, building cost data, private appraisals, or periodic surveys of assessment ratios or by the use of any other materials or information considered by the Director or the Department to be reliable aids in determining property value. In conducting this review, it shall not be necessary that properties be reviewed individually and separately; for the purpose of conducting this review, properties may be grouped into areas, grouped according to character or use, or grouped in any

other manner which the Director or the Department considers to be necessary or helpful to the efficient conduct of said review. The Director and the Department shall have the power, at any time, to order and enforce a review of any properties, if such properties have not been reviewed within one year; and it shall be the duty of the Director to order and enforce a review of any properties upon receipt of a request to do so from the final assessing authority for the county or city in which such properties are located.

(b) To maintain and enforce a continuing method of real property reassessment, so that all assessable real property in every county and Baltimore City shall be properly reassessed annually whenever the annual review required in subparagraph (a) hereof discloses a change in value. In addition, the Director and the Department shall have the power, at any time, after consultation with the county commissioners in the several counties, or the appeal tax court where such exists, or the board of municipal and zoning appeals in Baltimore City as the case may be, to order and enforce a reassessment of any properties, if it appears, after a consideration and evaluation of the results of the annual assessment review required by subparagraph (a) hereof, that the existing assessments upon such properties are erroneous because they are significantly greater or less than the assessments on other similar properties possessing comparable values.

§255.

(a) Before supervisor of assessments. — With respect to any property assessed locally, any taxpayer, or city, or the Attorney General or Department may demand a hearing before the supervisor of assessments or their respectively designated representatives, as to the assessment of any property or any unit of tax value, or as to the increase, reduction, or abatement of any such assessment, or as to the classification thereof, for the next ensuing year. Except as provided in §29(f) of this article, no demand for a hearing shall be granted under this subsection unless answer or protest to a notice as to assessments was made, in the counties or Baltimore City with the supervisor of assessments within twenty days from the date of such notice, or unless application for

revaluation or reclassification as to an existing or proposed assessment was made in the counties with the supervisor of assessments before the date of finality for the taxable year in question, or in Baltimore City before October first preceding the taxable year in question; provided however where the taxpayer is required to report personal property in such detail as to show the cost or market value thereof, but the taxpayer fails to report accurately the cost or other data required to establish market value, and the taxpayer claims that the property is assessed at a higher valuation than it would be if it had been reported accurately, then a demand for a hearing shall be granted if such answer or protest to the notice as to the assessment on such property is made within three years from the date of such notice.

(b) Before property tax assessment appeal board. — With respect to any property assessed locally, any taxpayer, or city, or the Attorney General or Department on behalf of the State may demand a further hearing before the property tax assessment appeal board as to the assessment of any property or any unit of tax value, or as to the increase, reduction or abatement of, or refusal to increase, reduce or abate, any such assessment, or as to the classification thereof, made by the initial assessing authority for the next ensuing year. No demand for a hearing shall be granted under this subsection unless made within thirty days from the date of a final notice from the initial assessing authority as set forth in §29(g) of this article.

§256.

(a) In general. — Any taxpayer, any city, or the Attorney General or Department on behalf of the State, or a supervisor of assessments as provided in §234 of this article, or the county commissioners of any county where an appeal tax court has been duly created claiming to be aggrieved because of any assessment or classification, or because of any increase, reduction, abatement, modification, change or alteration or failure or refusal to increase, reduce, abate, modify or change any assessment, or because of any classification or change in classification, or refusal or failure to make a change,

by any final assessing authority under §255 of this article, may by petition appeal to the Maryland Tax Court therefrom as provided in §229 in this article, and said Court shall hear and determine all such appeals within sixty days from the entry thereof. Such appeal shall be taken either (a) within thirty days after the date of the action or failure or refusal to act complained of, or (b) if an address shall have been filed with the final assessing authority appealed from by any person or corporation demanding a hearing as in §255 provided, then by the person giving such address within thirty days from the date of mailing of the notice of the action by the final assessing authority to the person and address so given or (c) if the appellant is a supervisor of assessments, such appeal shall be taken within thirty days from the date the final assessing authority sends notice of its action, in writing, by mail or otherwise, to the supervisor of assessments. No appeal on behalf of a taxpayer shall be allowed under this section from a failure or refusal to abate, reduce, or reclassify an existing assessment unless application in writing for such action shall have been filed by the appellant with the final assessing authority appealed from within the time limited for the filing of a demand for a hearing by §255 of this article.